

FILED
CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
NOV 15 2 35 PM '04
DISTRICT CLERK

UNITED STATES OF AMERICA,
Plaintiff,

Criminal No. 04-10064-RGS

v.
ROBERT P. BARRY,
Defendant.

DEFENDANT'S SENTENCING MEMORANDUM

Mr. Robert P. Barry(Barry), through undersigned counsel, respectfully requests that this Court sentence him at a criminal history category III rather than IV. On November 12, 2004, Mr. Barry's prior conviction for Carrying a Dangerous Weapon out of Barnstable District Court, ¶50 of the Pre-Sentence Report(PSR), was vacated by the Honorable Don L. Carpenter. A certified copy of the order allowing the motion for new trial is attached hereto as exhibit A. The effect of this is to lower Mr. Barry's criminal history points from a total of seven to six, placing him in criminal history category III rather than IV. With his total offense level remaining at 21, and with an adjusted criminal history category of III rather than IV the range of punishment should be 46-57 months rather than 57-71 as listed in ¶110 of the PSR. Mr. Barry respectfully requests the Court to sentence him to

the low end of that Guideline range, which is the agreed-to recommendation in the plea agreement with the Government.

Requested Judicial Recommendations at Sentencing

Mr. Barry respectfully requests the Court make the following Judicial Recommendations upon sentencing:

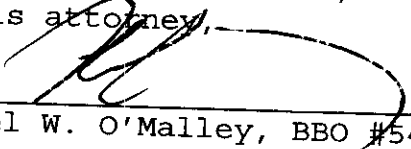
1. That he be allowed when and if deemed eligible to participate in the 500 hour drug program.

2. That he be allowed when and if deemed eligible to participate in the Intensive Community Confinement Program (Bootcamp).

3. That his Fine be waived due to his inability to pay now or upon his release.

Dated: November 15, 2004

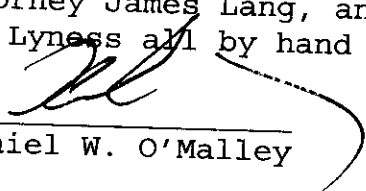
Respectfully submitted,
By his attorney,



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Certificate of Service

I, Daniel W. O'Malley, affirm that on November 15, 2004, I served a true and correct copy of the foregoing Sentencing Memorandum upon the Clerk of the United States District Court, Assistant United States Attorney James Lang, and upon United States Probation Officer Jo Lyness all by hand delivery.



Daniel W. O'Malley